REMARKS

Reconsideration and allowance of this application are respectfully requested in light of the foregoing amendments.

STATUS OF THE CLAIMS

Claims 1-4 and 23-35 are pending.

Claims 1-4 and 29-34 are provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over Claims 23-31 of copending Application No. 11/754,036.

Claims 1-4 and 29-34 are provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over Claims 23-31 of copending Application No. 11/754,074.

Claims 23-28, 31, and 35 are rejected under U.S.C. 112.

Claims 1-4 and 23-35 are rejected under 35 U.S.C. 103(a).

Claims 1, 23-25, and 27-28 have been amended; Claims 26 and 29-35 have been cancelled. No new matter has been added.

Discussion

Claims 1-4, 23-25, and 27-28 are non-obvious under 35 U.S.C. 103(a).

To reject claims in an application under section 103, an examiner must show a *prima facie* case of obviousness. *In re Deuel,* 51 F.3d 1552, 1557 (Fed. Cir. 1995). Furthermore, all words in a claim must be considered in judging the patentability of that claim against prior art. *In re Wilson,* 424 F.2d 1382, 1385 (CCPA 1970). In addition, to establish a *prima facie* case of obviousness, the following three basic elements must be met: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2)

the prior art reference or references when combined must teach or suggest all the claim limitations; **and** (3) there must be a reasonable expectation of success. MPEP § 2143. If the proposed modifications or combinations of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti,* 270 F.2d 810, 123 USPQ 349 (CCPA 1959). Finally, if an independent claim is non-obvious under 35 U.S.C. 103, then any claim depending therefrom is non-obvious. *In re Fine,* 837 F.2d 1071 (Fed. Cir. 1988).

Claim 1 has been amended to overcome the abovementioned 103(a) rejection. Contrary to the instant invention, as now presented in the amended Claim 1, U.S. Patent No. 4,440,718 (Ref. 1) requires a volatile foaming agent (Column 6, line 5 to Column 7, Line 33). Such express teaching teaches away from the instant invention, i.e. no use of such volatile foaming agent. In fact, proposed modifications to Ref. 1 to eliminate the use of volatile foaming agents requires a substantial redesign and reconstruction of the elements of the Ref.1 as well as a change in the basic principle under which Ref. 1 construction was designed to work. Accordingly, Claim 1 is not obvious.

Claims 2-4, 23-25, and 27-28 are dependent from Claim 1 ; thus, Claims 2-4, 23-25, and 27-28 are non-obvious under 103(a). Accordingly, the abovementioned 103 (a) rejection should be removed.

In order to overcome the abovementioned 112 rejection, Claims 23-25, and 27-28 have been amended; Claims 26, 31, and 35 have been cancelled; thus, abovementioned 112 rejection is overcome. Thus, above 112 rejection should be removed.

The Applicant will cancel the conflicting claims in the copending Application Nos. 11/754,036 and 11/754,074 to overcome the rejections under the non-statutory obviousness-type double patenting.

Accordingly, the abovementioned rejections have overcome.

If further issues remain in this case, Applicants respectfully request that the Examiner call Applicants' undersigned representative.

CONCLUSION

In view of the forgoing amendments and comments, Applicant respectfully requests that the rejections be overturned and that the instant application be allowed to proceed to issuance.

Respectfully submitted,

May 13, 2008

/Ray Ashburg/

Ray Ashburg
Attorney for Applicant
Reg. No. 53,956
THE DOW CHEMICAL CO.
2030 Dow Center
Midland, Michigan 48674
(979) 238-4262